IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 86 OF 1998.

1. Special Land Acquisition
   Officer, (SIP), Gogal,
   Margao, Goa.

2. The Executive Engineer,
   Works Division XIII,
   Irrigation Department,
   Quepem, Goa. ... Appellants.

VERSUS

1. Balkrishna Govind Raut Dessai.

2. Dattu Vinayak Raut Dessai,
   both residing at Assolda,
   Quepem, Goa. ... Respondents.

Mr. H.R. Bharne, Government Advocate for the Appellants.

Mr. S.D. Lotlikar, Senior Advocate with Ms. S. Naik, Advocate for the Respondents.

CORAM: N. A. BRITTO, J.

DATE OF RESERVING THE JUDGMENT: 31.03.2004.
DATE OF PRONOUNCING THE JUDGMENT:12.04.2004.

J U D G M E N T:

The State of Goa through its Special Land Acquisition Officer and Executive Engineer, Works Division XIII, Irrigation Department, has filed the present appeal against the Judgment and Aware dated 22.6.1998 of the learned Addl. District Judge, Margao (Reference Court).

2. Briefly stated, the Government had acquired an area of about 11745 sq.mts. from two properties

belonging to the respondents, surveyed under Nos.22/1 and 25/6 by virtue of Notification issued under section 4(1) of the Land Acquisition Act, 1894 and published in Official Gazette dated 28.5.1987 for the purpose of construction of Branch Canal of D-1 Selaulim Irrigation Project situated at village Xelvona,Assolda. By virtue of Award dated 30.9.1988 the respondents were paid compensation at the rate of Rs.5/- per sq.m. and the respondents having sought reference to be made to to the Reference, the Reference Court was pleased to enhance the said compensation at the rate of Rs.10/- per sq.m.

3. In support of the Reference, the respondents had produced two sale deeds dated 16.8.1984 - Exh.AW.1/A and 15.12.87 - Exh.AW.1/B and had examined AW.2 Ganesh Dessai and AW.4 Francisco Maura in support of the sale deeds. Admittedly, the land of the respondents, as stated by the respondents was a plain level land and had a road passing through the same which road proceeded from Sanvordem to Margao. The respondents had electricity line and water pipeline at a distance of about 100 mts., and,was situated at a distance of about 3 kms. from Curchorem bazaar,about 2 kms. from Chandor Railway Station and about 5 kms. from Quepem market and there was Timblo's Dockyard at a distance of 200 mts., a liquor factory and a school at

a distance of about 50 metres and there was also a temple nearby. The learned Reference Court preferred to rely upon the first sale deed dated 16.8.1984 - Exh.AW.1/A which was situated in the same village as that of the acquired land and after making certain deductions, fixed the market value of the acquired land at the rate of Rs.10/- per sq.m. The learned Reference Court chose not to rely on the second sale deed dated 15.12.1987 (Exh.AW.1/B) because it was situated in another village and also because it came to be executed after a notice of acquisition was published in Daily newspaper "Herald" dated 16.3.87 i.e. nine months after the public was made known about the said acquisition.

4. The learned Reference Court considering that the plot of sale deed dated 16.8.1984 - AW.1/A was a developed plot made certain deductions before arriving at a price of Rs.10/- per sq.m. The said deductions included deduction of about more than 21% towards conversion from agricultural to settlement use, another deduction of 20% towards land which would be required to be kept for roads, drainages, open space and yet another deduction of 33% towards actual development namely for construction of roads, gutters, providing electriciity, water, etc. Thus the Reference Court made a deduction of more than 74%. Considering that

the said sale deed was executed about three years prior to the date of notification under Section 4(1) of the Act, the learned Reference Court awarded a price increase of 5% per year considering that the acquired land was situated in the village.

5. Learned Govt. Advocate Shri Bharne has submitted that the acquired land being agricultural it had no potential for development. Shri Bharne has next submitted that the plot of sale deed dated 16.8.1984 – Exh.AW.1/A was small plot of land for which no appropriate deduction was taken. Shri Bharne has also referred to the case of **Land Acquisition Officer, Hyderabad and others v. Male Pullamma and others.** (1996 (8) S.C.C., 247) and submitted that the question of deduction **would arise only when the** lands are found to have potential value and there is evidence of development in the neighbourhood. Relying on the case of **Ratanlal Gupta and others v. Union of India** (reported in (1996) 7 S.C.C.3)Shri Bharne has submitted that when market value is to be determined on the basis of small plots of land the same price cannot be expected to be realised when a large track of land is offered to a willing purchaser by a willing vendor.

6. On the other hand, learned Advocate Shri Lotlikar has submitted that the acquired land was a

freehold agricultural land and therefore it is to be presumed that the same could have been converted to non-agricultural use. Shri Lotlikar has next submitted that no fault can be found with the trial court when it made use of a sale deed which pertained to the very village from where the land was acquired and though the acquired land was comparatively large, it was not so large as to make any further deductions. Shri Lotlikar has submitted that the learned Reference Court if at all it has erred, it has erred on the wrong side by taking too many deductions which were not warranted in the facts and circumstances of the case. The court of appeal is required to interfere with the judgment of the Trial Court when the judgment under appeal is not right, but only when it is shown to be wrong. No doubt that the acquired property was agricultural land, but the fact remains that the same was situated at a distance of about just 3 kms. from Curchorem and 5 kms. from Quepem and closeby there were factories as well. No fault can be found with the observations of the learned Reference Court when it observed that the acquired land being barad land, was suitable for the purpose of construction and considering the nearness of the acquired land from the said two towns, acquired land certainly had potential to be used for the purpose of construction. In the case at hand, the learned Reference Court has made total deductions which are

more than 74% to slash down the price which was fetched for the said developed plot of sale deed dated 16.8.84 and thereafter the learned Reference Court has also given appropriate increase for the price rise for three years. In my opinion the exercise done by the learned Reference Court by taking the price of the sale deed dated 16.8.84 – Exh.AW.1/A and after taking necessary deduction and reducing it to Rs.10/- per sq.m. in case of the undeveloped acquired land, cannot be faulted.

7. I therefore find no merit in this appeal and the same is hereby dismissed with costs.

N. A. BRITTO, J.

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